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HUMAN RIGHTS COMMITTEE

Fifty-sixth session

SUMMARY RECORD OF THE 1486th MEETING

Held at Headquarters, New York,
on Tuesday, 26 March 1996 at 10 a.m.

Chairman: Mr. AGUILAR

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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Initial report of Guatemala

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Chief, Official Records Editing Section, Office of Conference and Support Services, room DC2-794, 2 United Nations Plaza.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

96-80361 (E)

The meeting was called to order at 10.20 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Initial report of Guatemala (CCPR/C/81/Add.7; HRI/CORE/1/Add.47)

1. At the invitation of the Chairman, Mr. Martini Herrera, Mr. Arranz, Mr. Alonzo and Mr. Noguera (Guatemala) took places at the Committee table.

2. Mr. MARTINI HERRERA (Guatemala) stressed that, in setting up the Presidential Commission for Coordinating Executive Policy in the Field of Human Rights (COPREDEH), the Guatemalan Government had made the remedy of human rights abuses one of its highest priorities. He trusted that the appearance before the Committee of two senior figures from that Commission would result in a fruitful and mutually beneficial dialogue. He also emphasized the importance of the United Nations Mission for the Verification of Human Rights in Guatemala (MINUGUA).

3. Mr. ARRANZ (Guatemala), introducing the initial report of Guatemala, said that political, economic and social developments in his country in recent years had had salutary effects in such areas as constitutional reform, the quest for peace, the eradication of poverty, economic and social development, the strengthening of institutions, the elimination of impunity, the holding of free and fair elections and compliance with international human rights instruments. The Constitution recognized the primacy of treaties to which Guatemala was a party over domestic law in the area of human rights. Consequently, the Covenant formed part of the country's domestic legal provisions.

4. Guatemala had submitted its initial report at the end of 1994. The report had adhered closely to the model recommended by the Committee in describing the general legal framework in which the State protected civil and political rights. However, he noted that the initial report currently before the Committee had not been drafted with the involvement of COPREDEH, and therefore it failed to paint a true picture of what was actually happening in the country. He hoped to be able to provide the Committee with an updated and more realistic picture of the state of human rights in Guatemala.

5. The social and political situation in Guatemala during the previous decade had been characterized by a transition to democracy in the form of three civilian administrations. Despite several setbacks, the trend towards democratization and respect for human rights had continued apace. In that context, the Office of the Human Rights Procurator had played an important and ongoing role in consolidating the rule of law in Guatemala. The attributes of a civil society had been encouraged, most notably freedom of expression for all public organizations and the return of Guatemalan refugees to their place of permanent residence. A new Penal Code had been introduced in July 1994, and parts of the Constitution had been updated following a process of consultation with the population. MINUGUA had done valuable work in monitoring human rights compliance in the country, and although several disquieting instances of

impunity and human rights violations had been identified, no doubts had been expressed regarding the Government's commitment to the cause of human rights.

6. The system of local and national government had been overhauled with the direct involvement of citizens, including certain sectors of society which had previously refused to participate in elections. The increased involvement of the rural Maya indian population in the political life of the country had been a particularly welcome development. He was pleased to report that the cultural identity of the Maya indian population had been safeguarded by recent legislation designed to protect indigenous communities.

7. The Government's determination to pursue the peace process with the leadership of the Unidad Revolucionaria Nacional Guatemalteca (URNG) had never been doubted, and an agreement on socio-economic and agricultural issues was currently pending.

8. An economic upswing and increased tax revenues had enabled the Government to boost the effectiveness of its administrative efforts. Finally, the President himself had firmly charted a course towards real democracy involving the participation of citizens at all levels, while at the same time emphasizing the need to rebuild national self-confidence as a means of combating privilege, discrimination and poverty.

9. With reference to the legal framework in which Guatemala was ensuring and safeguarding the rights embodied in the Covenant, he noted that the new Constitution promulgated on 1 May 1995 was pre-eminently humanist in tone. The preamble, which Guatemala's Court of Constitutionality considered to be the interpretative source of the Constitution, contained a declaration of principles which the drafters had embodied in the text. It reaffirmed the primacy of the individual as the basis and end of the social order; recognized the family as the basis of the spiritual and moral values of society; and outlined the State's responsibility for promoting the common good and for strengthening the rule of law, security, justice, equality, freedom and peace.

10. Article 44 of the Constitution also stipulated that the rights and guarantees provided for therein should not exclude other rights and freedoms forming part of international instruments ratified by Guatemala. Other noteworthy constitutional guarantees included the establishment of a special tribunal to deal with matters such as amparo, the general constitutionality of laws, and the protection of the constitutional order. Other significant developments had been the establishment, under the Constitution, of the Human Rights Commission of the Congress of the Republic and the institution of the Office of the Human Rights Procurator, whose prime function was to protect the human rights guaranteed by the Constitution. Finally, those accused of human rights violations were required to be tried in public. Prosecutions could be brought merely by filing a complaint.

11. Since Guatemalan law was subordinate to the provisions of international instruments ratified by Guatemala, Guatemalan laws could be challenged in cases of inconsistency with human rights treaties or covenants when so established through the constitutional guarantees that had been put in place.

12. With regard to the penal system, the Constitution stipulated that prisoners should be rehabilitated and re-educated, and that minimum standard rules for the treatment of prisoners should be observed. Cruelty and physical or mental torture had been outlawed. In the event of ill-treatment, a prisoner had the right to seek payment of damages from the State and to petition the Supreme Court for immediate protection.

13. The constitution provided for sanctions against public officials giving or executing orders in contravention of constitutional provisions. Pursuant to United Nations recommendations, the Penal Code had been amended to cover extrajudicial execution and enforced disappearance as well as torture, in recognition of the fact that such crimes had a serious impact on Guatemalan society as threats to physical integrity and life. An initiative was also under way to amend the penal code to include provisions against racial discrimination.

14. In September 1995 the Executive had moved to eliminate some 24,000 military commissioners. Provisions had also been enacted to promote the economic and social development of the Mayas.

15. Amendments had been introduced to the Code of Criminal Procedure relating to investigations and the conduct of criminal proceedings. Offences in connection with government acts were now investigated by the Public Prosecutor's Office in an endeavour to end impunity. The new Code of Criminal Procedure provided for special investigations in cases where habeas corpus failed and there were grounds to suspect illegal detention by public officials. Any individual could petition the Supreme Court of Justice to request an investigation and to secure the release of such detainees.

16. Four important events had taken place in recent months: firstly, the International Labour Organization Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169) had been ratified; secondly, the Court of Constitutionality had found unconstitutional and voided several articles of the Penal Code; thirdly, the Optional Protocol to the Covenant had been approved; and, fourthly, the Unidad Revolucionaria Nacional Guatemalteca (URNG) had unilaterally suspended offensive military action, a move which had been immediately welcomed by the President. The latter represented an important step in the peace process.

17. Pursuant to the Comprehensive Agreement on Human Rights, the United Nations Mission for the Verification of Human Rights (MINUGUA) had become actively involved in human rights monitoring and verification throughout the country. The Government agreed with MINUGUA that the human rights situation still presented serious concerns, in particular with regard to the problem of impunity and the slow pace of justice. The Government had taken steps to strengthen the relevant departments and agencies, and was also mounting investigations into cases involving police officers and instituting a training programme to promote respect for human rights among the police. In addition the Ministry of Defence was providing training for officers in international humanitarian law.

18. The Government was fully cognizant of the fact that freedom, justice and peace necessitated recognition of the inherent dignity of the individual and of inalienable human rights. It also acknowledged that States must provide

individuals with conditions enabling them to enjoy their civil, political, economic, social and cultural rights.

19. In ratifying the Covenant, the Government had taken into account that it paralleled the Inter-American Convention on Human Rights and that its provisions were in accordance with the Constitution, and that its ratification would represent a reaffirmation of respect for fundamental human rights.

20. While the human rights situation in Guatemala still gave cause for concern, progress was being made, in particular in the purification of the armed forces and in taking action against corruption in the police force.

List of issues to be taken up in connection with the consideration of the initial report of Guatemala

21. The CHAIRMAN said that, as agreed by the Committee, the representatives of the State party would be asked to comment on the following from the list of issues: (a) the constitutional and legal framework within which the Covenant was implemented in Guatemala, and, in particular, the legal status of the Covenant within domestic law; (e) the respective functions and activities undertaken by the Office of the Human Rights Procurator and the Presidential Commission for Coordinating Executive Policy in the Field of Human Rights (COPREDEH), in particular the relationship of those bodies with each other and with other State organs, particularly the courts; (f) the precise steps taken to implement the Comprehensive Agreement on Human Rights concluded on 29 March 1994 between the Government and the Unidad Revolucionaria Nacional Guatemalteca (URNG) and their effectiveness; (h) whether ordinary legislation was being applied in the situation of armed conflict prevailing in the country and, if not, information on the legislation applicable in such circumstances; (i) the status accorded in time of emergency to the rights enumerated in article 4, paragraph 2, of the Covenant; (j) the safeguards and remedies available in time of emergency; (k) the outcome of the investigations or trials referred to in paragraphs 34 to 38 and 43 of the report, and, more generally, specific measures taken to investigate cases of summary executions, disappearance, torture, rape and other inhuman or degrading treatment or punishment, arbitrary arrests and detention of persons by members of the army and security forces, or paramilitary and other armed groups (such as the Civil Self-Defence Patrols (PACs)), and measures to bring those found responsible before the courts, to punish those proven guilty and to prevent any recurrence of such acts; (m) concrete measures taken to protect members of various social sectors, particularly members of the judiciary, lawyers, journalists, human rights activists and members of political parties from obstacles faced in the performance of their duties, intimidation, death threats and murder; (o) the circumstances, if any, under which military courts had jurisdiction over crimes allegedly committed by citizens and the circumstances, if any, under which military courts had jurisdiction over civil crimes allegedly committed by military officials; (p) information on steps taken to implement the Agreement on Resettlement of the Population Groups Uprooted by the Armed Conflict signed on 23 June 1994 and an indication of their effectiveness; and (s) whether the draft Indigenous Communities Act referred to in paragraph 92 of the report had already been adopted, and a description of the impact of the prevailing violence within the country on the enjoyment by members of indigenous groups of their rights under article 27 of the Covenant as well as

of concrete measures taken to preserve the cultural identity, language and religion of members of those groups.

22. Mr. ALONZO (Guatemala) said that under the constitution the provisions of international agreements and treaties, including the Covenant, took precedence over domestic law.

23. Mr. ARRANZ (Guatemala) said that the Human Rights Procurator had a constitutional mandate to devise and apply guidelines for all government offices. The Office of the Human Rights Procurator also monitored government action and made recommendations to the Government. The role of COPREDEH was to monitor follow-up to such recommendations within the executive branch, as well as follow-up to any recommendations emanating from MINUGUA. COPREDEH also served as a repository for all national human rights data and obligations. The head of COPREDEH held the rank of Secretary of State. Both COPREDEH and the Office of the Human Rights Procurator operated in complete independence.

24. The Comprehensive Agreement on Human Rights had provided a framework for commitments by URNG and the Government. Most of those commitments related to the Government, but URNG had undertaken not to inflict suffering on civilians. In that connection the Government noted the positive comments it had received from MINUGUA in terms of its support for the Mission, the success of which was central to the Government's promotion of human rights throughout the country. The commitments entered into had been promulgated by the Office of the Human Rights Procurator in both Spanish and various Mayan dialects. As a result of the Comprehensive Agreement, a number of human rights violations, such as torture, extrajudicial killings, and enforced disappearances had been classified as crimes. There was also a general commitment to promote human rights in all areas. In that context action was being taken to purify the armed forces and police forces in order to eliminate undesirable elements. Initiatives were also being taken to tackle impunity, which amounted to a structural problem, necessitating an integrated approach involving the executive, the judiciary and the legislature. In particular, efforts were being made to protect witnesses and to expedite proceedings. Training was also being provided for magistrates and judges. Putting an end to impunity was a central concern of the President.

25. The existence of clandestine groups was a significant problem in the country, and in some cases, at least, former members of the armed forces expelled under the purification process had joined such armed groups. The Government was seeking to control the flow of arms and to implement a security plan. Some successes had been noted, and there had been some improvement in the security situation.

26. The commitment on guarantees of freedom of association and movement had been adversely affected by URNG activities, in particular involving irregular forces. The Government trusted that URNG would be able to control and eliminate such events. Compulsory military service had been abolished, so that the country now had volunteer armed forces. New legislation was being prepared that would allow for conscientious objection and for civil service in lieu of military service.

27. Regarding the protection of human rights activists, the Government had made clear its determination. It was gratifying that, apart from the deaths of two Lutheran ministers, MINUGUA had not reported any major problems in that respect. Regarding compensation for the victims of human rights violations, the Government had sought to take steps by means of social investment funds; considerable sums of money had already been allocated for that purpose, and all of the Government's social expenditure was channelled into activities to help the victims by means of socio-economic programmes.

28. Concerning human rights in the context of armed conflict, it was recognized by all sides that priority must be given to putting an end to the suffering of the civilian population. Such suffering arose both from Government actions against guerrilla movements and from the activities of the insurgents themselves. It was most regrettable that, despite the declaration of a unilateral cease-fire by the guerrilla movements, people were still being forced to pay the "war tax", and some sectors of the population were beginning to consider that the only solution was to take up arms to protect themselves from such exactions. The Government was fully aware that such a situation could lead to a considerable level of suffering and insecurity among the population, and was determined to take every possible step to rectify the situation.

29. Mr. ALONZO (Guatemala), in response to a question regarding the applicability of ordinary legislation in the situation of armed conflict prevailing in the country, said that it was provided in the Constitution that, in the event of invasion or a major breach of the peace, there could be certain limitations on human rights, particularly in the areas of detention, interrogation of detainees, the right to organize trade unions, media freedom, and the possession and carrying of weapons. However, neither those nor any other rights had in fact been limited by the Government, although the enjoyment of some of them had been constrained in practical terms as a result of the situation prevailing in the country. The Government and URNG had agreed that, pending the establishment of a firm and lasting peace, civilians must be spared suffering as much as possible, and that their rights must be respected. It was hoped that, as a result of that agreement and of the political will to achieve peace in the country, the civilian population would gradually achieve a greater degree of enjoyment of those rights which had been so badly affected by 35 years of conflict.

30. Responding to a question regarding the status during emergencies of rights under article 4, paragraph 2, of the Covenant, and a question regarding safeguards and remedies available in times of emergency, he said that the rights contained in article 4, paragraph 2, were not among those which could be curtailed in times of national emergency. Those rights the enjoyment of which could be partially suspended during national emergencies were clearly enumerated in the Constitution, and such curtailments would be clearly set out in the decree declaring the state of emergency. The security and safety of the population were considered to be indispensable and would be protected by the Government at all times.

31. In response to a request for details of specific measures taken to investigate cases of summary executions, disappearance, torture, rape and other inhuman or degrading treatment or punishment, arbitrary arrests and detention of

persons by members of the army and security forces, or paramilitary and other armed groups, and of measures taken to prosecute and punish those responsible for such acts and to prevent their recurrence, he said that the Government was fully aware of the importance of the rule of law and the necessity of putting an end to impunity. A new Penal Code had been introduced, but much remained to be done in the area of institutional changes, and the Government was determined to galvanize all levels of administration in the country in a major effort to overcome impunity. Following consultations with MINUGUA and the Office of the Human Rights Procurator, steps had been taken to ensure awareness throughout the executive branch of the importance of urgent and concrete action in that respect. A communication and coordination strategy had been devised in order to bring fully into play the entire legislative and judicial apparatus for the purpose. Also, a number of meetings had taken place, involving representatives of MINUGUA and of the three major branches of Government, for the purpose of coordinating efforts to prosecute and punish those responsible for human rights violations.

32. Mr. ARRANZ (Guatemala), in reply to a question regarding measures for the protection of members of various social sectors, particularly members of the judiciary, lawyers, journalists, human rights activists and members of political parties, from obstacles faced in the performance of their duties and from intimidation, death threats and murders, said that one of the Government's key concerns in the context of the problems facing the country was the upsurge in violence, and the deficiencies of the public authorities in their efforts to enforce the law. Urgent measures had been taken to ensure the protection of human rights nationwide, and the Government was grateful for the invaluable support of MINUGUA in that respect. Measures to improve the effectiveness of all State mechanisms for the protection of human rights had gone some way towards restoring confidence among the people.

33. Measures were in hand to give new impetus to the professionalization of security and law enforcement agencies on the basis of respect for human rights and observance of national and international standards. Regarding the protection of government officials and other persons active in the human rights field from violence and intimidation, plans were being prepared, subject to review by MINUGUA and by representatives of friendly Governments interested in the protection of human rights, and it was hoped that those plans could be implemented in the very near future. Regarding threats against human rights activists, the Government considered it regrettable that in a number of cases, such threats had been reported directly through the mass media, and often to international organizations and to non-governmental organizations, rather than to the competent authorities in the country. In such cases, the Government had been prevented from showing its readiness to provide all necessary protection to those who were being threatened. A certain lack of confidence in the authorities had also, in some instances, led those who were being provided with protection by the authorities to reject that protection because they apparently considered it to be inadequate.

34. Mr. ALONZO, in response to a question as to the jurisdiction of military courts, said that, according to the Constitution, military tribunals could deal only with offences committed by members of the armed forces. The Penal Code in force since June 1994 had expressly modified the military code, specifying that

only those offences committed within the military field would be dealt with by military tribunals and that offences under ordinary criminal law committed by members of the armed forces would be dealt with by civilian courts. However, offences committed by members of the armed forces while acting in their military capacity would continue to be tried by courts martial.

35. Mr. ARRANZ (Guatemala), replying to a question on the implementation and effectiveness of the Agreement on Resettlement of the Population Groups Uprooted by the Armed Conflict, said that a technical commission made up of two representatives of the Government, two representatives of displaced persons, and two observers representing the international community, had been created to take charge of the implementation of that Agreement. It had been working for 18 months and had completed about 90 per cent of the necessary work. Six specialized teams were working under the control of the commission, dealing with matters such as the economic viability of new settlements and the documentation needs of returnees. Mine removal was proceeding with international assistance as well as with help from MINUGUA, and the URNG was also providing assistance in the form of information on areas where mines had been laid.

36. In answer to a query regarding the current status of the draft Indigenous Communities Act, he said that the law had not yet come into force; however, a historic Agreement on Identity and Rights of Indigenous People had been signed on 31 March 1995, recognizing that Guatemala was a multi-ethnic, multicultural and multilingual society, that the indigenous peoples had been subject to de facto discrimination, exploitation and injustice, on account of their origin, culture and language, and that their participation in the solution of their own problems was fundamental. Consequently, the Government had undertaken to implement significant changes, including constitutional reforms. It was recognized that those undertakings should be honoured as State commitments, notwithstanding the recent change of government.

37. A further important development was that the Congress had approved International Labour Organization Convention No. 169 concerning indigenous peoples, considering that the treaty would strengthen peaceful coexistence in Guatemala, and ratification would be complete as soon as the approval of the executive was obtained.

38. Mr. PRADO VALLEJO welcomed the fact that the representatives of Guatemala were highly qualified in the human rights field, able to conduct a positive dialogue with the Committee, and willing to be very frank and spontaneous regarding that country's current problems. It was also gratifying that Guatemala had ratified the Covenant, and he hoped that it would also ratify the first Optional Protocol. However, there had been little improvement in the situation with regard to violations of human rights and fundamental freedoms, such as death threats, torture, disappearances and summary executions; he wondered what practical steps would be taken to improve matters. He feared that the will of the civil authorities was insufficient to prevent the armed forces and police from continuing to violate human rights, defending their own impunity and obstructing investigations.

39. Peace talks had achieved a degree of success, particularly by enabling refugees and internally displaced persons to return to their places of origin;

but major problems remained even in that area, since Civil Self-Defence Patrols, created and maintained by the army, often threatened would-be returnees and prevented them from reaching home.

40. Therefore, while welcoming the candour shown by the representatives of Guatemala, he requested additional information as to any clear commitment to put a stop to impunity, which was at the heart of the country's human rights problems and its civil and political crisis.

41. Lord COLVILLE said that it was gratifying to see the democratic process continuing in Guatemala. A Government now fully committed to human rights had recently been elected, although it was his understanding that voter turnout had been poor, and he wondered why that had been the case.

42. Governments were often unaware of the adverse publicity they received in reports by non-governmental organizations and so did nothing to respond to or counteract the allegations made. He asked the delegation to review the reports made available to the Committee by organizations such as Amnesty International, Casa Alianza, Equality Now and Human Rights Watch for the Americas, and to comment on them.

43. The slowness or non-existence of the process of law in Guatemala had made the public lose confidence in the judicial system, although the recently instituted training of judicial personnel and police officers should improve the situation. It was not clear, however, why cases should take so long, and who oversaw the judiciary when, as happened, cases were "lost".

44. He asked whether, despite the cease-fire with URNG announced the previous week, there was still some indication that the war would continue. If the conflict did indeed stop, the Civil Self-Defence Patrols could be disbanded, thus removing one of the main sources of complaint. He himself thought that they had done a good job on the whole, but since they were composed of ordinary villagers misdeeds were always a possibility.

45. In many cases, forensic exhumations of persons killed had led to the arrest of perpetrators who, however, had gone unpunished. He would like to know what the Government was planning to do in those cases.

46. Mr. KLEIN said that it had been a great step for the Government to ratify the Covenant without reservations, but that such a step had legal consequences and gave rise to high expectations that had not yet been fully met. The report gave the impression that the human rights situation was perfectly in order in Guatemala - as, for instance, in paragraphs 41 or 42 - but it was general knowledge that the real situation was quite different. A recent New York Times article had, for instance, revealed that officials at the highest levels of two previous Administrations had been implicated in a notorious case involving the murder of a guerrilla leader, and it would be interesting to know if such officials had been brought to trial. With regard to COPREDEH, he wondered if its recommendations were set out in a published list, so that it could be ascertained if they had been carried out. He would appreciate some figures regarding the intimidation of judges and other law-enforcement officials, and how many of them had been killed or had resigned because of the threats.

47. The report explained (para. 51) that there were no provisions for compensation under article 9, paragraph 5, of the Covenant, because other remedies existed; yet such remedies were no substitute for the protection provided by the Covenant. Also, the kind of preventive detention referred to in paragraph 68 of the report would be of serious concern in relation to the Covenant. He would like clarification as to whether there were any provisions in Guatemalan law governing the incommunicado procedure.

48. Although the report stated that there were no institutional forms of torture in Guatemala, more information would be useful on the kind of human rights training received by the National Police, and whether the police force had a code of ethics, for such things would have very practical applications.

49. Mr. BÁN said that since it was the Committee's first meeting with the State party, it needed to learn more about the legal framework for the enforcement of human rights in Guatemala. Article 46 of the Constitution established the pre-eminence of international treaties and agreements over domestic law, but it was not clear if the Constitution had been incorporated into domestic law and what rank it had.

50. Regarding the Court of Constitutionality, one of its functions under article 262 (e) of the Constitution was to advise on the constitutionality of treaties, conventions and draft legislation at the request of any institution of State. Some clarification would be useful as to whether legislation could be set aside if it was found to conflict with a treaty. It was also not clear how to interpret the provision of article 44 of the Constitution which stipulated that social interest prevailed over individual interest. Also, article 175 of the Constitution might be a source of uncertainty inasmuch as it stated that laws that ran counter to the provisions of the Constitution were void ipso jure; it was not clear whether there were any specific repeal procedures and what that meant in practice.

51. He would be interested to know what interpretation Guatemala gave to its obligation under article 2, paragraph 1, of the Covenant to protect its citizens from any harassment and human rights violation, especially in the light of a recent case in which the sister of a prominent trade unionist had been abducted, raped and tortured despite heavy police protection and the fact that the Episcopal Human Rights Office of Guatemala had reported 160 extrajudicial killings in the first six months of 1994. Information should be given on the specific measures the Government was taking to protect its citizens.

52. Mr. BUERGENTHAL said that he was glad that the delegation had described the real Guatemala rather than the fairy tale pictured in the report prepared by the previous Government. The best one could say was that the report itself was defective. No doubt the current Government was committed to living up to its international obligations, but the question was whether it had real power to end the historical, institutional impuñity that high officials continued to enjoy in Guatemala. The pervasive impunity was a curse that had prevented Guatemala from enjoying the rights guaranteed by its own Constitution and by international treaties. He would be interested to hear what the current Government would actually be able to do in that regard. Further information would also be welcome on what specific steps it would take to protect people in the

countryside from extrajudicial killings, committed largely by the Civil Self-Defence Patrols, another scourge that should be abolished; and also to protect local judges and prosecutors from threats or intimidation by security forces. The civilian paramilitary units had 340,000 members, and it was not clear how they would be disarmed and who would disband them; and also how compliance would be ensured with the arrest warrants issued against individuals belonging to them, which had not been the case in the past. He also wished to know if the National Police force was part of the military or totally independent of military control and command.

53. Ms. MEDINA QUIROGA said that one of the factors responsible for the violence in Guatemala was the activity of the Civil Self-Defence Patrols, which should be disbanded. She also had questions regarding the administration of justice in the country - how, for instance, the appointment by Congress of Supreme Court and Appellate Court judges could be reconciled with the requirements of an independent judiciary. She wondered if there were any laws regulating the judicial profession with respect to appointment, transfer, professional standards, promotion and the like; and whether, since judges were said to be overworked, there was any delegation of functions to unqualified subordinates, as happened in other Latin American countries. Regarding the judicial supervisors who were responsible for overseeing the personal or administrative conduct of judges, it was her understanding that the Supreme Court took action against judges on the basis of the reports of such supervisors, and she wondered whether there was any other procedure for the punishment of judges. Also, she would like an explanation of how it could be that the National Police did not comply with arrest orders issued by judges. It was not clear if the police reported to the Ministry of the Interior or the Ministry of Defence; or if the military were officially or informally involved in maintaining civil order.

54. The effects of ordinary, non-political violence in Guatemala were best seen in two sectors of the population, children and women. She had recently read a shocking document describing an extraordinarily complicated security apparatus in control of juvenile detention centres, which included the National Police, the Treasury Police, a private police force, military police, military officers, security agents and members of the Criminal Investigation Unit of the National Police. She did not understand if those bodies were interrelated or if they acted independently in their cruel mistreatment of children, who were, after all, not involved in politics or guerrilla activities. As to women, their subordinate position before the law and in society put them at greater risk of violence. She was pleased that the Court of Constitutionality had declared certain articles of the Penal Code unconstitutional and wondered whether there were any plans to revise the provisions of the Civil Code regulating marriage, patria potestas, the administration of conjugal affairs, the right of women to work without the permission of their spouses, and the like. Certainly, the status of women in Guatemala did not meet the standards of article 26 of the Covenant.

55. Mr. BRUNI CELLI said that he agreed that impunity, the administration of justice, corruption and military involvement were at the root of many of Guatemala's difficulties, but that he thought the central problem was the war. No other country had had such a continuous period of civil war, lasting

40 years, during which the violation of human rights had been a daily occurrence. Guatemala also seemed to have had the longest peace talks, and, worse yet, they seemed, when seen from the outside, to have foundered on unimportant issues. He wondered whether there was really the political will in Guatemala to see the negotiations through to peace. The future of human rights in the country would depend on the application of the agreements concluded. The power of the military in the country derived directly from the war; with the end of the war would come the end of military supremacy and also the end of impunity and refugee problems and such troublesome and ambiguous organizations as the paramilitary Civil Self-Defence Patrols, whose huge membership was a current and future danger. The Government should give thought now as to how so many could be demobilized after a final peace agreement was concluded, and he would like information on its plans to do so.

56. The CHAIRMAN, speaking in his personal capacity, observed that Guatemala had ratified the Statute of the Central American Court of Justice, and asked what the Government's position was on article 25 of the Statute, which referred all human rights matters in respect of the Central American countries to the exclusive jurisdiction of the Inter-American Court of Human Rights, a provision that presumably encompassed matters falling under other international human rights instruments as well.

The meeting rose at 1.05 p.m.

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HUMAN RIGHTS COMMITTEE

Fifty-sixth session

SUMMARY RECORD OF THE 1487th MEETING

Held at Headquarters, New York,
on Tuesday, 26 March 1996, at 3 p.m.

Chairman: Mr. BÁN
(Vice-Chairman)

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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Second periodic report of Zambia

This record is subject to correction.

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Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

96-80372 (E)

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In the absence of Mr. Aguilar, Mr. Bán, Vice-Chairman, took the Chair.

The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Second periodic report of Zambia (CCPR/C/63/Add.3; HRI/CORE/1/Add.22/Rev.1)

1. At the invitation of the Chairman, Mr. Kasanda, Mrs. Chigaga and Ms. Kazhingu (Zambia) took places at the Committee table.

2. Mr. KASANDA (Zambia), introducing the second periodic report of Zambia, said that his country had undergone tremendous changes since the presentation of its previous report. A multi-party system of government had been reintroduced and general elections held. The new ruling party, the Movement for Multi-Party Democracy (MMD), was committed to promoting democratic principles of regular, free and fair elections, transparency and accountability and was determined to protect fundamental human rights and freedoms and to consolidate the rule of law in Zambia.

3. Pursuant to that commitment, the President of the Republic had appointed a commission to review the Constitution of Zambia. The commission's terms of reference were to collect the views of the public on the type of constitution Zambia should enact; recommend a system of government that would promote the democratic principles of regular and fair elections, transparency and accountability; recommend appropriate arrangements for the protection of human rights, the rule of law and good governance; recommend provisions to ensure the competence, impartiality and independence of the judiciary; examine the composition and functions of the organs of State with a view to ensuring their independence and maximizing their checks and balances; recommend a suitable system for a smooth transfer of power following an election; recommend the relationship that should exist between the party in power and opposition parties; take account of previous national and foreign constitutions as well as the views submitted to the MUNYAMA Commission; recommend modalities for the adoption and amendment of the constitution for grass-roots participation in the political process; examine ways of strengthening the system of parliamentary and multi-party democracy; and promote broad public debate on the constitutional proposals for a democratic Zambia.

4. Fully aware that the protection of fundamental human rights and freedoms required the existence of an independent judiciary, the Government had instituted wide-ranging measures, including the retraining of police officers, judges and magistrates, in order to reinforce the independence of the judiciary.

5. On the economic front, major reforms had been undertaken in the financial, social, health and education sectors aimed at assisting the economic recovery of the country.

6. As a result of the major changes which had taken place, the current report was self-contained and was not an update of the first report.

Constitutional and legal framework within which the Covenant is implemented, non-discrimination and equality of the sexes, protection of the family, state of emergency, right to take part in the conduct of public affairs, and rights of persons belonging to minorities (articles 2, 3, 4, 23, 26 and 27 of the Covenant) (section I of the list of issues)

7. The CHAIRMAN read out section I of the list of issues concerning the second periodic report of Zambia, namely: (a) information on cases where provisions of the Covenant had been given judicial notice, on the status of the Zambian Bill of Rights in domestic law, on how contradictions between domestic legislation and the Covenant were resolved, and on whether consideration had been given to incorporating the Covenant into domestic law; (b) clarification of the extent to which the provisions of the Covenant had been taken into account in the formulation of the new Constitution; (c) clarification of the procedures for the implementation of any views adopted by the Committee under the Optional Protocol; (d) information on the respective functions and activities of the Commission for Investigation, the Investigator-General and the MUNYAMA Human Rights Commission as well as the relationship of those bodies with each other and with other State organs; (e) description of the steps taken to disseminate information, in the various languages spoken in Zambia, on the rights recognized in the Covenant and in the Optional Protocol and to inform the Zambian public of the Human Rights Committee's consideration of the current report; (f) clarification of why none of the states of emergency referred to in paragraph 14 of the report (CCPR/C/63/Add.3) had been notified to the Secretary-General; (g) clarification of the safeguards and effective remedies available to individuals during a state of emergency; (h) information on the measures taken to ensure the effective enjoyment by minorities of their rights under article 27 of the Covenant; (i) information on the measures taken to eliminate the remaining areas of discrimination against women and to bring Zambian legislation into full conformity with the provisions of the Covenant.

8. Mr. KASANDA, responding to section I (a) of the list of issues, said that the Zambian Bill of Rights was enshrined in part III of the Constitution and its status as the supreme law of the land was therefore unassailable. There were no contradictions between the Bill of Rights and the Covenant. Indeed the Bill of Rights guaranteed many of the fundamental rights and freedoms enshrined in the Covenant and in other international and regional human rights instruments.

9. With regard to the issue raised in section I (b), the national debate on the provisions of the new constitution was already far advanced. Care would be taken during the technical drafting stage to ensure compatibility with international human rights instruments. The only exceptions would be cases where the national interest was at stake.

10. With regard to the procedure followed for the implementation of the Committee's Views (section I (c)), he pointed out that the Views were first transmitted to the Minister of Legal Affairs, who made his recommendations to the Cabinet, after which the Government formulated its response.

11. The function of the Commission for Investigation (section I (d)), which had been established pursuant to article 90 of the Constitution and the Commission for Investigations Act, chapter 183 of the laws of Zambia, was to review complaints of maladministration on the part of government agencies and, where appropriate, to make recommendations thereon to the Government. The MUNYAMA Human Rights Commission had been established in 1993 to investigate cases of torture alleged to have taken place during 1973 and any current cases and to report thereon to the Government. While there was no direct relationship between the two Commissions, particularly since the MUNYAMA Commission's mandate had expired following the submission of its report, there was some similarity in their functions in that they both reviewed the conduct of government agencies and served as advisory bodies.

12. With regard to section I (e) of the list of issues, regrettably, the Covenant had not been translated into the seven major languages of Zambia, owing to the lack of resources and competing priorities. It should be noted, however, that the non-governmental organizations present in Zambia had played a helpful role in that regard.

13. On the subject of the states of emergency which had been declared in Zambia (section I (f)), it must be recalled that a state of emergency had existed in Zambia from the time of its independence until after the 1991 multi-party elections. That state of emergency had been instituted by the colonial administration to suppress the national independence movement. It had been retained by the young State to suppress criminal violence and rebellion, maintain public order and the system of justice and generally to ensure the protection of the State, especially in view of the unilateral declaration of independence by the then Southern Rhodesia. The Committee was no doubt aware of the role played by Zambia in the struggle for the liberation of other southern African States. The reimposition of a state of emergency in March 1993 was a response to an internal plot to promote civil disobedience. The state of emergency had been declared by the President with the support of the national parliament and had remained in force for only three months. It was because of the particular circumstances of those states of emergency that the Secretary-General of the United Nations had not been notified.

14. Referring to the remedies available to individuals during a state of emergency (section I (g)), he said that the right to file a writ of habeas corpus and to legal representation was still guaranteed by law during such periods and it was for the courts to determine whether the detention of particular individuals was justified. The safeguards enshrined in article 27 of the Constitution were intended to prevent abuse by the State under articles 25 and 26, which provided for derogations from fundamental rights and freedoms during states of emergency and time of war.

15. On the subject of protection of the rights of minorities (section 1 (h)), he noted that all persons, including minorities, were equal before the law in Zambia. Moreover, a constitutional amendment enacted in 1990 expressly prohibited discrimination based on sex. While national legislation in that field was in conformity with the provisions of the Covenant, regrettably, de facto discrimination still existed as a result of long-standing cultural practices and traditions which discriminated against women. Women were denied

full and equal access to economic resources, including credit, ownership of land and inheritance rights. Their participation in all aspects of the nation's social and economic life was limited and they were denied equal access to educational and health services. Zambia was aware that the long-term solution lay in providing equal access to education for girls to enable them to develop their full potential and in educating the society as a whole so as to bring about a change in attitudes towards women, who in the past were trained only to become good wives and mothers.

16. Mr. LALLAH recognized Zambia's leading role in the fight for self-determination for its neighbours and stated that paragraph 2 of the report was indicative of Zambia's commitment to bring its legislation into conformity with the Covenant and the Optional Protocol and to implement the Committee's views.

17. He wondered, however, if there might not be some inconsistencies between the Covenant and the Constitution, particularly, in protecting against all forms of discrimination. He was glad that the delegation recognized that sexual discrimination was still a problem but felt that it was a problem not only of customary or traditional law but also of the existence of various derogations allowed by the Constitution in articles such as 23, paragraphs 4 (c) and (d) which adversely affected equality of women in the areas of divorce, adoption and inheritance. The effect of customary law on the status of women should be studied and the white paper under preparation should provide a forum for discussing how not only practice and tradition, but also the law, affected the status of women. It was not enough simply to pass laws, equality truly had to be enshrined within those laws.

18. He also requested additional information on part II of the Constitution, which appeared to impose unreasonable restrictions on the citizenship qualifications of presidential candidates in violation of article 25 of the Covenant.

19. Mr. KRETZMER, while applauding the positive achievements in Zambia, wondered to what degree the principles enshrined in the law were applied in practice. Non-governmental organizations seemed to be very active in Zambia and had provided many reports, especially on the status of women. Their unequal status often seemed to be the result not only of a disparity between the law and practice but also of the exploitation of the law by the authorities in order to reinforce inequalities. Mr. Lallah had raised concerns about article 23, paragraphs 4 (c) and (d) of the Constitution and the report by the Organization of Women in Law and Development in Africa cited the statement of a local court that custom and tradition allowed a man to beat his wife if she misbehaved. That would be a case not only of de facto discrimination but of discrimination that was legitimized by the legal system. A distinction was also made in the case of adultery: a woman who petitioned a court for divorce because her husband was guilty of adultery was denied a divorce, while the divorce was granted to a man who petitioned a court because he suspected his wife of adultery. Zambia should also take steps to outlaw discrimination against women in the areas of employment, housing, access to credit and other areas mentioned in the report.

20. He expressed concern about the independence of the judiciary, since there had been worrying reports that in March 1996 two journalists from the Post newspaper had been tried and condemned by parliament to indefinite detention, raising the question of the relative judicial powers of the judiciary and the supreme political body of the nation.

21. Mr. BHAGWATI wondered if article 23, paragraph 3 of the Constitution defining discrimination as different treatment to different persons, might affect affirmative action programmes in favour of women, since such programmes were permissible under article 26 of the Covenant. He also wondered why paragraph 4 (b) of the same article excluded non-citizens, whereas the Covenant in article 26 referred to "all persons".

22. He also had concerns about article 27, paragraph 4 of the Constitution concerning the Tribunal to be created by the Chief Justice to decide whether legal aid would be granted for an appeal to the High Court requesting enforcement of the fundamental rights set out in the Constitution. It seemed to him that the process would almost require that the applicant receive legal aid first in order to be able to pay for the proceedings to request legal aid for his case before the High Court. In addition, he did not see any provisions for legal aid in general.

23. Like Mr. Kretzmer, he had grave concerns about the indefinite detention imposed on two journalists from the Post for criticizing a statement made in parliament by the Vice-President attacking a judicial decision in a case involving the Public Gathering Act. He would like to see the provision of the National Assembly Powers and Privileges Act defining the speaker's powers in cases of contempt of parliament. Did he have the same powers as that in the British Parliament, were there limits? Did he truly have the authority to deprive two Zambian citizens of their liberty for an indefinite period subject to an apology? Article 25 of the Constitution went far beyond what was provided for in article 4 of the Covenant concerning derogations from human rights in case of a public emergency, and that article should be amended to conform to the Covenant.

24. The report referred to a human rights commission. What were its statute and its mandate, had it conducted any inquiries, had any sanctions been applied? The report also referred to constitutional reforms. Once such reforms were proposed, did the authorities follow up on the suggestions? Could the Government arbitrarily reject such proposals without consulting parliament or calling a constituent assembly? According to Organization 19, a proposal concerning freedom of the press had been rejected by the Government since it was already included in the Constitution. Referring to a report from Amnesty International, he wondered if it was an accurate description to say that the prisons were severely overcrowded, that sanitation, food and water were grossly inadequate and had led to outbreaks of dysentery and other diseases and that the prisoners were deprived of basics such as soap and clothing. If true, what steps had been taken to remedy the situation?

25. A report from the Zambian Association for Research and Development on the status of women, said that after the most recent election, no women had been appointed to the cabinet, a worse record than that of the previous Government.

In a cabinet shuffle six months after the election, two women were named to the cabinet but only in minor positions. Discrimination against women was a serious problem and the Constitution, in article 23, actually exempted the most common forms of discrimination namely, those arising out of customary, family or personal law, in effect, protecting and actually legalizing discrimination. The Intestate Succession Act also treated the widow very unfairly. What steps were being taken to put an end to that legalized discrimination? Finally, the report gave little information on article 24 of the Covenant, specifically child labour; was there a problem, if so how great, and what steps were being taken to eliminate it?

26. Mr. MAVROMMATIS expressed satisfaction with the degree of progress made in Zambia since the inception of multi-party democracy, which the Committee found very encouraging. Concerning discrimination on the basis of gender, he wondered why Zambia, which had ratified international human rights instruments, had not simply taken the provisions of the Covenant (which reflected the principles of the Universal Declaration of Human Rights) or other international or regional human rights instruments, and included them in an amendment to the Constitution?

27. The Committee had received a great deal of information on the status of women from local non-governmental organizations, which seemed very active in Zambia. Their activity was rather unusual for a developing country and was an encouraging sign. While he appreciated the delegation's candid replies, greater efforts had to be made to eliminate prejudice inherent in customary and tribal law which bred continued violations of the rights of women. Since Zambia had accepted the Optional Protocol, and ratified the Covenant, the Committee's jurisprudence held that the provisions of the Covenant superseded all tribal or customary law and simply invoking the Covenant would be one quick way of eliminating such anomalies in the law as differential treatment of men and women in cases of adultery.

28. Zambia generally had an excellent record in responding to concerns expressed by the Committee. Only two cases had been pending and one had been resolved, one declared inadmissible. One of those cases, however, involved the death penalty for aggravated robbery involving the use of firearms. Thus, the death penalty was applicable in cases other than murder or treason and that point should be brought up when the delegation discussed article 6 of the Covenant.

29. He expressed some confusion at the process whereby the Government decided to comply with a decision of the Committee. It had been stated that after the Ministry of Justice had taken a decision, the case was handed over to the Council of Ministers, and afterwards a commission decided on compliance. However, the Committee wanted assurances that there was some systematic way of ensuring compliance. In the absence of enabling legislation, were the decisions of the Committee directly applicable? Concluding his remarks, he noted that although the report said that there was no penalty of imprisonment for debt, like most common law countries there was imprisonment for failing to make payments such as support payments, ordered by a court. Imprisonment in such cases was in violation of the Covenant and other countries had found more satisfactory solutions to that problem.

30. Mr. EL-SHAFEI said that although the rights enshrined in the Covenant were said to be covered by the Constitution and laws of Zambia, the State party was under obligation to review the compatibility of its domestic laws with the Covenant at the time of ratification. He asked whether such a review had taken place. For example, paragraph 13 of the report mentioned several derogations from rights that contravened article 4 of the Covenant in case of a public emergency. The discrepancies between customary law and statutory law were also of concern, since international obligations should take precedence.

31. Ms. MEDINA QUIROGA also requested clarification concerning the declaration of a public emergency addressed in articles 30 and 31 of the Constitution. She could not understand why there should be derogations from such rights as freedom of conscience, protection from discrimination and protection of young persons from exploitation.

32. With regard to the situation of women, she inquired what such sectors of the Zambian Government as the parliament and the higher courts were doing to address de facto discrimination. Since abortion was a crime in Zambia, she wondered what types of family planning services were available and whether any studies had been done on the effect of illegal abortion on the maternal mortality rate. She inquired about protection for unmarried women who became pregnant. For example, would a pregnant teenager be forced to leave school? Since according to the core document, only a small number of women were in the labour force, she would welcome information on affirmative action programmes for women.

33. Mr. FRANCIS said that, under treaty law, a party to an international instrument could not invoke internal law to evade an international obligation. He therefore inquired about the prospects for harmonization of the Constitution with the Covenant.

34. On the subject of gender rights, publications from non-governmental organizations reported that women were discriminated against through administrative policy and lack of police response to violence against them. One such study of gender bias reported that all the petitions for divorce initiated by women invoking adultery as grounds had been rejected on the pretext that under customary law, which allowed polygamy, a man could not commit adultery. He asked for further comment on that situation.

35. Ms. EVATT asked for more specific information about the Sarah Longwe case, mentioned in paragraph 9 of the report where an unaccompanied woman had been refused entry to a hotel dining room. Such cases pointed to a great need for general anti-discrimination laws, and she wondered whether such laws were being contemplated. In her view, the Government position regarding the force of customary law helped to perpetuate outdated attitudes towards gender. In the recent constitutional review, women had argued for more effective anti-discrimination measures, which had, in fact, been recommended by the constitutional review commission. Its recommendations had not been reflected in the new Constitution, however, indicating failure to provide adequate representation of women in the political process.

36. Mr. KASANDA (Zambia) said that Zambia had subscribed to the Optional Protocol with the intention of carrying out its obligations thereunder in due course. It freely acknowledged problems in certain areas, but its policies were governed by transparency and accountability.

37. With regard to discrimination against women, the Government acknowledged the problem of customary law versus statutory law. Marriages contracted under statutory law were fully covered by the protections in the Covenant, but customary law was more permissive and accorded more rights to men. The situation was changing but the process was slow. Unfortunately, a girl who became pregnant would be expelled from school on disciplinary grounds, but the boy involved would receive the same punishment.

38. Mrs. CHIGAGA (Zambia) said that Zambian law gave women a choice: they could contract marriage under the Marriage Act or under customary law. Under the Marriage Act, divorce would be granted only upon proof of irretrievable marital breakdown, which included adultery of either party. The cases mentioned earlier were unions entered into under customary law, which allowed polygamy. In such cases, the Government could do little. The problem was far-reaching and involved politics, the economy, the power structure and education. An educated woman with a certain degree of economic independence was unlikely to contract a marriage under customary law. In reality, however, most Zambian women were not aware of their rights or were not in a position to refuse such a marriage.

39. The Government could enforce laws only with the agreement of its citizens. For example, no statute prohibited the granting of credit to women, but 90 per cent of bank managers were men; prevailing attitudes inhibited them from doing so. The Government was stressing change through education and had instituted a policy of positive discrimination in favour of girls for access to secondary school and university. The active non-governmental organization community was also working to raise awareness and change attitudes.

40. Zambian law protected women from violence; assault on a spouse was a criminal offence. Domestic violence was quite a complex problem, however. If a wife was beaten by her husband and had her injuries medically certified, she could press charges. In the vast majority of cases, however, women declined to prosecute their husbands, usually because they were economically dependent on them.

41. Mr. KASANDA (Zambia), in reply to a question about the Sara Longwe case, said that there was no law prohibiting unaccompanied women from entering hotels, but that there were administrative rules established by hotel management aimed at preventing prostitution.

42. The two journalists who had been detained indefinitely on charges of contempt of parliament were being held under provisions meant to prevent journalists from discussing certain matters which were still being debated on the floor by the members. Lawyers representing the journalists had protested their detention and the courts had not yet decided the case.

43. While the question of citizenship in Zambia was covered in article 5 of part II of the Constitution, new legislation had been introduced to require that

in order to be eligible for the presidency, a person had to be third generation Zambian. The legislation in question had not yet been enacted and was still under debate.

44. Turning to the question of the participation of women in political life, he said that, in the past, women had been given token positions in the Government rather than posts based on their qualifications. The attitude of the Government now in office was that women had to have degrees in order to hold public office. There were currently two women in Government in the area of science and technology and energy. He stressed that change was slow to come and that it would take several years for women to compensate for their general lack of education. For many years women were taught to be subservient to their husbands and in many poor families it was the girls who left school to help their mothers.

45. In reply to an inquiry as to whether the Government had taken any steps to implement recommendations emanating from the Human Rights Commission, he said that the Government had not yet fully complied with those recommendations. On the other hand, the Government was committed to the provisions of the Covenant and was determined to incorporate standards of international law into its domestic legislation. The challenge was to ensure that those standards became part of domestic behaviour. There had actually been two cases where the Government had paid compensation in compliance with the views of the Committee. Finally, he said that there was a law in Zambia providing for imprisonment for debt, but that it was not applied in practice.

46. Mrs. CHIGAGA (Zambia) said that her Government felt sincerely obliged to review the statutes when it ratified an international instrument such as the Covenant. However, law review was an ongoing and long process. Since 1991, there had been a massive law reform programme which would yield results over the next five years when many new laws would be passed.

47. While she conceded that article 25 of the Constitution concerning the state of emergency was a derogation of article 4 of the Covenant, she stressed that the state of emergency was only invoked as a last resort to prevent serious danger to society. Furthermore, there were very stringent conditions for invoking a state of emergency.

48. Turning to the question of women and abortion, she said that women had free access to family planning facilities and that contraceptives were provided free of cost. Public opinion in Zambia was against abortion and unwed mothers were not stigmatized in society. The mortality rate of women resulting from legal abortions was not a very serious problem in her country.

49. Lord COLVILLE asked for clarification with regard to the case of the two journalists who had been detained on charges of contempt of the National Assembly, and specifically whether it would be possible for the representatives of Zambia to produce the text of the National Assembly (Powers and Privileges) Act under which the journalists had been detained.

50. Mr. KRETZMER asked whether there was any legislation in Zambia outlawing discrimination in the private sector, for example in the area of employment or housing.

51. Mr. KLEIN said that article 25 of the Constitution presented two very specific inconsistencies with the Covenant as regarded freedom of conscience and the prohibition of discrimination. The Covenant strictly prohibited derogation from those rights and he asked how the Government proposed to deal with those inconsistencies.

52. Ms. EVATT said that information from United Nations sources had suggested that illegal abortions in Zambia accounted for 1 out of 10 of all maternity admissions and had a fatality rate of 4 in 1,000. She sought confirmation of those figures because they indicated that illegal abortion constituted a serious problem.

The meeting rose at 6 p.m.